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EXAMINER

DUNWOODY, AARON M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN CLARK SWIFT
and MARVIN MILLER

Appeal 2015-003493
Application 12/621,283
Technology Center 3600

Before JILL D. HILL, LISA M. GUIJT, and LEE L. STEPINA,
Administrative Patent Judges.

HILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Jonathan Clark Swift et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1–9, 25, and 26.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Claims 10–24 were withdrawn from consideration. Final Act. 1.

BACKGROUND

Sole independent claim 1, reproduced below, represents the claimed invention, with emphasis added.

1. A unitary one-piece radially crushable ferrule comprising:
 - a crushable socket portion;
 - an attachment portion; and
 - a work hardened, strengthened, polygonal, *hollow*, torque communication portion, *generally contiguous* with said socket portion and said attachment portion, and providing torque communication to an attached fluid power component.

REJECTION

Claims 1–9, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Courtot (US 3,442,537, iss. May 6, 1969) and Weatherhead (US 3,433,505, iss. Mar. 18, 1969). Final Act. 2.

OPINION

The Examiner finds that Courtot discloses, inter alia, “a polygonal, hollow, torque communication portion (13, 13’).” Final Act. 2. The Examiner also finds that Weatherhead discloses work hardening, and concludes that it would have been obvious “to provide a work hardened torque communication portion to prevent cracking.” *Id.* The Examiner also finds that Courtot’s torque communication portion (13, 13’) is generally contiguous with its socket portion 24 and attachment portion. *Id.*

Hollow

Appellants argue that Courtot’s outer portion 13, alleged by the Examiner to be a torque communication portion, is not “hollow” as claimed,

because it is simultaneously formed with an inner portion 14 such that “intimate contact” is formed therebetween to provide “a permanent assembly during formation of the article,” such that “[t]here is no empty space inside.” Appeal Br. 10 (citing Courtot 4:20–24 and 27–29). Courtot’s outer portion 13 and inner portion 14 are formed such that “there is no time prior to brazing or forming when the hexagonal portion exists in a hollow state.” Appeal Br. 11 (citing Courtot 4:12–13).

Appellants further contend that, if Courtot’s outer portion 13 is considered hollow because it has “a piece that is hollow before formation or assembly, then it is not ‘*a unitary one-piece ferrule*’” as recited in claim 1, but rather is an assembly 12 of outer portion 13 and inner portion 14. Appeal Br. 10–11.

The Examiner responds that, even if outer portion 13 and inner portion 14 are formed simultaneously such that there is intimate contact between them, the “ferrule is hollow along the central bore 28” and is one piece as required by claim 1.² Ans. 7. The Examiner has the better argument, because Appellants have failed to explain why the empty space of Courtot’s bore 28 does not meet the broadest reasonable interpretation of the term “hollow.”

Indeed, either (1) the Examiner is correct that the ferrule includes only the outer portion 13 and is a one-piece device that is hollow because it does not include the inner portion 14 as originally proposed by the Examiner, or (2) the outer portion 13 and inner portion 14 of the ferrule are unitary/one-piece upon formation of the ferrule because they are simultaneously formed

² Appellants describe this arrangement as “[b]eing permanently, irreversibly filled with solid brass.” Appeal Br. 10.

with a permanent and intimate contact therebetween, and are hollow due to the presence of the bore 28.

Generally Contiguous

Appellants argue that the female threads 22 of Courtot's attachment portion "are not generally contiguous with the wrenching portion at 33, as there is at least a flange 32 there between." Appeal Br. 11 (citing Courtot, Fig. 1, 3:55). Appellants, however, have failed to explain why the existence of a flange 32 in Courtot prevents its torque communication portion 13 from being contiguous with its attachment portion 24, particularly when the Examiner contends that the flange 32 is part of the attachment portion (Ans. 5). Further, Appellants do not allege that, or explain why, Courtot's flange 32 should be considered a separate portion lying between the attachment portion and the torque communication portion.

For the reasons set forth above, we sustain the rejection of claim 1 as unpatentable over Courtot and Weatherhead.

Dependent claims 2–9, 25, and 26

Regarding the dependent claims generally, Appellants argue that the Examiner failed to establish prima facie obviousness of the dependent claims because the rejection "omit[s] any specific designation to the parts being relied upon, and fail[s] to make clear whether the parts are found in Weatherhead or Kacines," and Kacines is not "identified in the rejection heading." Appeal Br. 11. Appellants also argue that the rejection lacks supporting rationale. *Id.*

In rejecting claims 2–9, 25, and 26, the Examiner states that Kacines discloses the subject matter recited in each dependent claim, namely: an

annealed socket portion (claim 2); an annealed attachment portion (claim 3); a torque communication portion retaining a functional, hollow shape following crushing of the socket and deformation of the attachment portion (claim 4); the torque communication portion being between the socket and attachment portions (claim 5); a socket portion adapted to retain a hose end gripping insert (claim 6); the torque communication portion being thicker than the socket portion (claim 7); the torque communication portion being thicker than the attachment portion (claim 8); the attachment portion being thicker than the socket portion (claim 9); securing the ferrule to a fluid power component only by crushing (claim 25); and an area underneath the torque communication portion being hollow and free of any solid material (claim 26). Final Act. 2–4.

In a Final Action dated January 22, 2013, the Examiner rejected claims 1–9 over Kacines (US 2002/0096877, pub. July 25, 2002) combined with various secondary references, which rejections include, verbatim, the findings regarding dependent claims 1–9 that are set forth in the appealed Final Action. We thus assume that the Examiner’s findings in the appealed Final Action refer to Kacines ’877. However, because Kacines ’877 is not relied upon in the statement of the rejection, we cannot be certain that the Examiner is indeed relying upon this reference. Further, the Examiner has not provided any reason why one skilled in the art would combine Kacines with Courtot and/or Weatherhead. We therefore do not sustain the rejection of dependent claims 2–9, 25, and 26.

DECISION

We AFFIRM the rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over Courtot and Weatherhead.

We REVERSE the rejection of claims 2–9, 25, and 26 under 35 U.S.C. § 103(a) as unpatentable over Courtot and Weatherhead.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART